

TITLE OF REPORT: NORTH HERTS HOMES' BOARD COMPOSITION

REPORT OF THE CHIEF EXECUTIVE

EXECUTIVE MEMBER: COUNCILLOR BERNARD LOVEWELL

1. SUMMARY

- 1.1 To obtain the Council's view on the proposal from North Hertfordshire Homes (NHH) to change the size and composition of its Board, including reducing the number of NHDC nominees from three to two and reducing the overall size of the Board from 12 to ten.

2. RECOMMENDATIONS

- 2.1 That the Council supports NHH's move to change the size and composition of its Board as follows:

- A reduction in the overall size of the board from 12 to ten members
- A reduction in the number of Council nominees from three to two
- An increase in number of Independent Board Members from six to eight and a corresponding reduction in Tenant Board Members from two to zero

- 2.2 NHH is also seeking to reduce the maximum term of office from nine to six years with an extension of one year on a year-by-year basis under exceptional circumstances* to an absolute maximum of nine years.

[*exceptional circumstances will relate to the skill and competency requirements of the Board at the time of review].

- 2.3 That the Council delegates to the Executive Member for Housing and Environmental Health the authority to cast the Council's vote in relation to this matter at a meeting of the shareholders, having regard to the recommendations at paragraphs 2.1 and 2.2, above.

3. REASONS FOR RECOMMENDATIONS

- 3.1 To ensure that the Council's and residents' interests are protected through the enactment of appropriate governance arrangements at NHH.

4. ALTERNATIVE OPTIONS CONSIDERED

- 4.1 None.

5. CONSULTATION WITH EXTERNAL ORGANISATIONS AND WARD MEMBERS

- 5.1 There has been a considerable period of discussion between NHH and Council officers in connection with this issue.

- 5.2 Cllr Lynda Needham, the Leader of the Council and Cllr Bernard Lovewell, the Executive Member for Housing and Environmental Health, have both been consulted and are supportive of the proposals contained in this report.

6. FORWARD PLAN

- 6.1 This report does not contain a recommendation on a key decision and as such has not been included in the Forward Plan.

7. BACKGROUND

- 7.1 As a private registered provider of social housing, NHH is subject to regulation by the Homes and Communities Agency (HCA). NHH has recently reviewed its governance arrangements, ensuring compliance with National Housing Federation guidance (including the 2015 Code of Governance), taking account of the changing operating context for housing associations and the risks that boards need to own and manage.

- 7.2 NHH was created via a Large Scale Voluntary Transfer of the Council's housing stock in 2003. In 2005 NHH became registered under the Industrial and Provident Societies Act 1965 and adopted a set of rules that were heavily based on a model published by the National Housing Federation, a non-governmental body representing the interests and services of housing associations. On 1 August 2014 the Co-operative and Community Benefits Societies Act 2014 came into force and became the governing legislation for all organisations that were previously industrial and provident societies. NHH is therefore now a registered society under the Co-operative and Community Benefits Societies Act 2014 ("a CCBS registered society").

- 7.3 From 2003 until 2012, NHH's Board operated in accordance with the NHDC/NHH Housing Stock Transfer Agreement with a Board of 15 Members. At the time that NHH was created and the stock transferred, the Council took the position that there should be equal representation on NHH Board by the Council (as the originator of the housing association and previous owner of the housing stock), the tenants (who were the beneficiaries of the activities of the organisation), and a number of independent Board Members (who could be directly recruited on the basis of their skills/knowledge/ experience and thereby provide a new dimension to the running of the organisation).

- 7.4 In April 2012 the Council considered future governance arrangements and resolved:-

- (1) That, subject to resolution (2) below, the move of North Hertfordshire Homes (NHH) to reduce its Board to a maximum of 9 or 12 Members be supported;
- (2) That the current split of NHH Board Members, i.e. 1/3rd tenants, 1/3rd Council nominees and 1/3rd independently selected Members, be retained;
- (3) That Councillor Bernard Lovewell, as Cabinet Portfolio Holder for Housing and Environmental Health, be delegated the authority to cast the Council's vote in relation to this matter having regard to resolutions (1) and (2) above, at a shareholder meeting of North Hertfordshire Homes;

- (4) That Officers of the Council be delegated the authority to provide written confirmation (as regards the covenant cited in Paragraph 5.3 of the report) to North Hertfordshire Homes that the Council is content for the NHH Board to change on the basis as set out in resolutions (1) and (2) above.
- 7.5 In January 2013 the Homes and Communities Agency (HCA) carried out a regulatory inspection of NHH. The outcome of that inspection was a downgrading of their governance rating from G1 (top scoring) to G2 due to a number of concerns that the HCA had about the operation and effectiveness of the Board and its Members. Of particular note were the previous proposals to alter the size and composition of the Board, and increase financial and treasury management expertise, which had not been effected and the absence of any alternative plan.
- 7.6 As a consequence of the HCA inspection further amendments to the make up of the NHH board were proposed and in April 2014 Council resolved:
- (1) That the change in circumstances in relation to the operation of North Hertfordshire Homes to reduce its Board to a maximum of 12 Members be noted;
- (2) That the move of North Hertfordshire Homes to reduce its Board to a maximum of 12 Members be supported;
- (3) That the reduction in NHDC nominees from five to three, and tenant nominees from five to three, be supported; and
- (4) That authority be delegated to Councillor Bernard Lovewell, as Portfolio Holder for Housing and Environmental Health, to cast the Council's vote in relation to this matter at a meeting of the shareholders, having regard to Resolutions (1) and (3) above.
- 7.7 The HCA upgraded its assessment of NHH's governance in April 2015 back up to G1, noting that NHH had "taken appropriate and effective action to resolve weaknesses" previously identified in its governance arrangements.
- 7.8 NHH has highlighted the need for highly skilled board members who are required to lead the organisation as it seeks to meet a series of challenges, which are outlined in Appendix A.
- 7.9 NHH has written to the Council (see Appendix C) outlining its rationale for the proposals and seeking its agreement for their introduction.

8. ISSUES

- 8.1 The Housing Stock Transfer Agreement envisaged that the Council, residents of the housing stock in the district and the independent sector would have an equal ability to input and be part of the decision making process of NHH.
- 8.2 However, it has since become clear, particularly following HCA's downgrading of NHH due to weaknesses in governance, that an effective board must also be fully equipped with the skills and knowledge needed to provide effective governance in a more hostile and riskier economic environment.

8.3 The changes proposed to the board composition are as follows:

- A reduction in the overall size of the board from 12 to ten members
- A reduction in the number of Council nominees from three to two
- An increase in number of Independent Board Members from six to eight and a corresponding reduction in Tenant Board Members from two to zero
- The maximum term of office reduced from nine years to six years with an extension of one year on a year-by-year basis under exceptional circumstances* to an absolute maximum of nine years

[*exceptional circumstances will relate to the skill and competency requirements of the Board at the time of review].

8.4 NHH undertook consultation with its tenants on its proposal of changing the Tenant Board Member positions to Independent Board Member positions. All 8,794 tenants were consulted and of the 33 respondents, 24 voted against this proposal. Following the receipt of legal advice, NHH decided to proceed with its proposal. NHH has confirmed its commitment to putting the voice of its customers at the very heart and design of their services and more information on the new approach is contained in Appendix B.

8.5 The regulatory environment continues to change with the publication of the Housing and Planning Act 2016. This makes provisions for reducing local authority influence over private registered providers by limiting or removing the ability of local authorities to appoint board members and in particular by enabling registered providers to remove board members appointed by a local authority. These provisions will be detailed in, as yet, unpublished regulations.

8.6 NHH is currently holding a Board vacancy for a NHDC nominee as the previous member retired in September following completion of their nine year term.

8.7 Should the proposals be agreed, NHH will seek to retain its current Tenant Board Member on the Board and they will fill one of the new independent roles.

9. LEGAL IMPLICATIONS

9.1 At the time of the 2003 stock transfer, NHH was a registered company. However, as noted earlier in the report it subsequently became an Industrial and Provident Society and is now a CCBS registered society. A CCBS registered society is structured much like a company in that it has both a board of directors and shareholders. The Council, as a corporate body, holds shares in North Hertfordshire Homes Limited (with a 1/3rd shareholding, with the remaining 2/3rds split equally between the tenants and independent shareholders) and also has a nomination right as regards membership of the NHH Board.

9.2 In order for NHH to change the size and/or composition of its Board it would need to secure formal agreement from the Council in two ways: (a) a resolution would need to be passed by two thirds of the voting shareholders at a general meeting of the organisation, and (b) by direct written agreement from the Council (see 9.3 below).

9.3 In addition to complying with its registered rules, NHH is obliged to have regard to the terms of the 2003 Housing Stock Transfer Agreement; this contains a covenant in the following terms:

“{NHH covenants} Not to change the constitution of the company in so far as it relates to local authority and tenant representation without the Council’s prior consent in writing PROVIDED ALWAYS and it is hereby agreed by the Council that where the Council shall have given its consent in writing to such a change to the Memorandum and Articles of the Association of the Company the Council in its capacity as member of the Company shall not subsequently vote against the amendments at the relevant General Meeting of the Company.”

- 9.4 It is appropriate to distinguish between the roles of the Council's nominated NHH Board members and NHDC as an NHH *shareholder*. The Council, as set out above, is currently entitled to nominate up to three persons (who need not necessarily be serving Councillors) to sit on the NHH Board. These persons are obliged to make decisions in the best interests of NHH, not the Council. The Council’s interests are promulgated via its corporate status as a shareholder as set out in the rules.
- 9.5 The Portfolio Holder for Housing and Environmental health is delegated with the power to cast the Council's vote in connection with its shareholding in NHH Ltd – this is prescribed by 14.8.5 (kk) of the Council’s Constitution:

“The scope of this Portfolio {Housing and Environmental Health} is concerned with the Council’s:

Share interest in North Hertfordshire Homes Limited unless the decision relates to significant matters that might have a longer term implication for the Council, in which case such matters must be referred to the Council.”

The decision as outlined above does constitute a matter that should be determined by the Council as it does have long term implications for the Authority.

10. FINANCIAL IMPLICATIONS

- 10.1 There are no specific financial implications for the Council arising from a change in the composition of the North Hertfordshire Homes’ Board.
- 10.2 It is clearly in the best interests of both organisations, and the communities that they serve, that NHH has appropriate governance arrangements in place going forward. This is particularly important given the financial and regulatory environment. The Homes and Communities Agency retains the economic regulatory function for Private Registered Providers and that assessment relies on the competence of the relevant Board to manage its organisation’s affairs and ensure good Governance, which in turn impacts on the availability, and cost of finance for NHH and their ability to grow.

11. RISK IMPLICATIONS

- 11.1 The principle risks are both operational and financial for NHH which could affect its ability to deliver affordable housing in the District or even ultimately impact on the financial viability of the organisation.

12. EQUALITIES IMPLICATIONS

- 12.1 The Equality Act 2010 came into force on 1st October 2010. The Act also created a new Public Sector Equality Duty, which came into force on 5th April 2011. There is a General duty, described in 12.2, that public bodies must meet, underpinned by more specific duties which are designed to help meet them. NHH is a public body for the purposes of the Act, and, since the Council is a shareholder it is obliged to discharge the duties as set out in 12.2 below.
- 12.2 In line with the Public Sector Equality Duty, public bodies must, in the exercise of their functions, give *due regard* to the need to eliminate discrimination, harassment, victimisation, to advance equality of opportunity and foster good relations between those who share a protected characteristic and those who do not.
- 12.3 There are no direct implications of this matter in connection with the Council's equalities obligations.

13. SOCIAL VALUE IMPLICATIONS

- 13.1 As the recommendations made in this report do not constitute a public service contract per se, the measurement of 'social value' as required by the Public Services (Social Value) Act 2012 need not be applied, although equalities implications and importantly, positive opportunities are identified in the relevant section in paragraphs 12 above.

14. HUMAN RESOURCE IMPLICATIONS

- 14.1 There are no direct HR implications directly arising from a change in composition of the NHH Board.

15. APPENDICES

- 15.1 Appendix A – Overview of Governance.
- 15.2 Appendix B – Voice of the Customer.
- 15.3 Appendix C – NHH's letter to the Council.

16. CONTACT OFFICERS

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17. BACKGROUND PAPERS

17.1 None.

APPENDIX A – Overview of Governance

The landscape of housing across southern England is one of polarised markets. Whilst constrained supply of housing means homeowners see their assets appreciate ahead of all other forms of investment; poorer households and those in the stretched middle are finding it increasingly difficult to secure good value accommodation in which to create a home.

This imbalance is beginning to have a wide reaching effect on households across income bands and as a result those organisations delivering homes are increasingly in the public spotlight. Housing Associations such as North Hertfordshire Homes have therefore to balance a number of competing issues in fulfilling their objectives to provide and manage affordable housing.

It is against this backdrop that the complexity of housing association business models increases and that demand for the right skills to lead organisations grows. Some of the key challenges that North Hertfordshire Homes is concerned to ensure it is equipped to deal with include:

- The delivery of a range of new homes that utilise market rates to cross subsidise affordable housing provision.
- The uncertainty of reductions in welfare support and public services on customers and the revenue of the organisation.
- Changes in the demographic of the population and the long term planning to respond effectively to differing needs.
- Building effective strategies for treasury and asset management that generate opportunity to build much needed new homes whilst sustaining existing homes.
- Managing a larger and more wide ranging set of risks from a diverse portfolio of homes and services.

It is in this context that the organisation has, over the past three years, continued to evolve the makeup of its Board and Executive team. Most recently, the organisation has appointed a number of new posts across its Executive and undertaken a competency assessment of its current Board.

Our governance review recommended that we consult on changing the make up of our Board to ensure it is best placed to fulfil its fiduciary duties. In order to achieve this it recommended the following:

- A reduction in the overall size of the board from 12 to ten members
- A reduction in the number of Council nominees from three to two
- An increase in number of Independent Board Members from six to eight and a corresponding reduction in Tenant Board Members from two to zero

NHH consulted its customers during August and September on these changes and out of a total of 8794 tenants, NHH received only 33 responses. These responses were as follows:

- For: 4
- Against: 24
- Neutral: 5

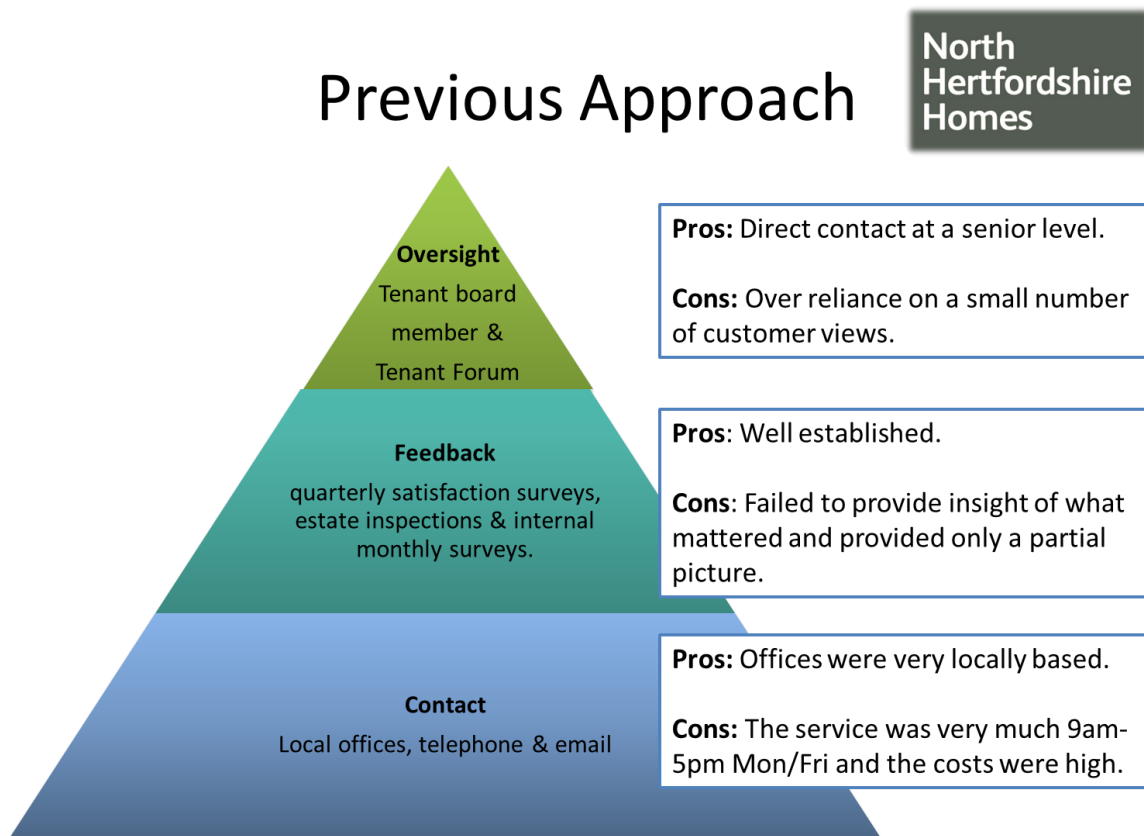
All respondents received a personal reply from NHH to answer their queries with issues for those who were not in support largely focussed on the desire to ensure the voice of the customer is not undermined by the proposed change, something dealt with later in this paper. From our experience the level of response that NHH received is normal in this type of tenant consultation as the response rate is usually very low. Legal advice received by NHH confirmed that receiving 24 tenant responses that were 'against' the proposals out of a total of 8794 tenants should not be considered to be of significant concern and as such the NHH board would be acting reasonably in moving forward with the proposals following the outcome of the consultation above.

APPENDIX B - Voice of the Customer

North Hertfordshire Homes is intent upon delivering services to its customers which fulfil their service needs and appeal to the emotional drivers that determine a positive experience. We are proposing a number of changes to our current approach, linked to changes in governance, to develop our understanding of customer feedback and to ensure we act on it positively.

Background

Our current approach to the voice of our customer reflects the traditional approach that, historically, many housing associations adopted. That approach is based on Boards relying on a backward scrutiny of services, i.e. Services already received, by tenant representatives, with a reliance on high level 'lagging' customer satisfaction measures. This was very much in keeping with the regulatory standards placed upon Housing Associations by the Homes and Communities Agency from around 2010.



The drawbacks of this approach are that it relies heavily on a small number of active tenants to act as the voice of the majority of silent residents. Resources tend to be focussed on supporting the interaction of representatives to voice their opinions rather than analysis of what our wider customer base think and feel about the service and the organisation.

With the development of the internet, mobile devices and digital communication we have seen increasing opportunities to gain more meaningful feedback from customers in real time, to segment different customer types and to predict behaviours of customers based on their preferences. These trends have created the opportunity for Housing Associations to gain insight from the voices of many more of its customers.

The information generated is much more rich of content and when analysed can present a real depth of understanding about the feedback of different customers and how we can improve the organisation and our services. This approach also allows us to make better use of the opportunities that arise from increasingly providing 24/7 access to our services.

How will it be Delivered?

Through a panel that contains a mix of customer involvement and expertise in the field of customer experience we will then work as an organisation to develop our services to respond to this feedback. This approach retains a commitment to meet our responsibilities under the regulatory standards for Housing Associations, but makes greater use of the innovations that have changed our society over the past decade.



Outcomes

In making these changes, we are committed to putting the voice of our customer at the very heart of the design of our service and to gaining the widest possible feedback from our customer base in order to improve relentlessly on what we do.

- A wider range of customer voices influencing services.
- Customers working together to raise issues that we can help resolve.
- Skilled experts in customer experience adding valuable insight in reviewing feedback and challenging direction.
- A better service to customers.

We have already delivered significant changes to our feedback routes to allow for real time customer feedback on service experience and to allow us to compare trends on customer sentiment between us and other sectors offering customer services. We intend to proceed with the creation of the Voice of the Customer panel in the new year alongside pilots of our online communities tools to offer customer groups throughout our developments the opportunity to come together through social media and discuss their neighbourhoods.